

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	No. 12-md-02311
	:	Hon. Marianne O. Battani
	:	

In Re: Wire Harness	:	Case No. 2:12-cv-00103
In Re: Instrument Panel Clusters	:	Case No. 2:12-cv-00203
In Re: Heater Control Panels	:	Case No. 2:12-cv-00403
In Re: Bearings	:	Case No. 2:12-cv-00503
In Re: Anti-Vibrational Rubber Parts	:	Case No. 2:13-cv-00803
In Re: Windshield Wipers	:	Case No. 2:13-cv-00903
In Re: Radiators	:	Case No. 2:13-cv-01003
In Re: Starters	:	Case No. 2:13-cv-01103
In Re: Automotive Lamps	:	Case No. 2:13-cv-01203
In Re: Ignition Coils	:	Case No. 2:13-cv-01403
In Re: HID Ballasts	:	Case No. 2:13-cv-01703
In Re: Electronic Powered Steering Assemblies	:	Case No. 2:13-cv-01903
In Re: Fan Motors	:	Case No. 2:13-cv-02103
In Re: Fuel Injection Systems	:	Case No. 2:13-cv-02203
In Re: Power Window Motors	:	Case No. 2:13-cv-02303
In Re: Automatic Transmission Fluid Warmers	:	Case No. 2:13-cv-02403
In Re: Air Conditioning Systems	:	Case No. 2:13-cv-02703
In Re: Windshield Washer Systems	:	Case No. 2:13-cv-02803
In Re: Constant Velocity Joint Boot Products	:	Case No. 2:14-cv-02903
In Re: Spark Plugs	:	Case No. 2:15-cv-03003
In Re: Shock Absorbers	:	Case No. 2:15-cv-03303
In Re: Body Sealing Products	:	Case No. 2:16-cv-03403
In Re: Interior Trim Products	:	Case No. 2:16-cv-03503
In Re: Exhaust Systems	:	Case No. 2:16-cv-03703
In Re: Ceramic Substrates	:	Case No. 2:16-cv-03803
In Re: Access Mechanisms	:	Case No. 2:16-cv-04103
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THIS DOCUMENT RELATES TO:	:	
END-PAYOR ACTIONS	:	

**END-PAYOR PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION
TO DENY GEICO'S EXCLUSION REQUEST AS INVALID AND INEFFECTIVE**

End-Payor Plaintiffs (“EPPs”) respectfully submit this memorandum in response to the Round 3 Settling Defendants’ Motion to Deny Geico’s Exclusion Request As Invalid and Ineffective (“Motion to Deny”).¹

First, the Round 3 Settling Defendants assert that “without the consent or even knowledge of potentially millions of other Class Members, GEICO seeks to exclude those other Class Members from the Round 3 Settlement Classes, deny those Class Members the benefits of the Round 3 Settlements, and pursue claims subject to the Settlement Agreements and Releases that the Court has stated it intends to approve.” Motion to Deny at 2. GEICO has stated that “GEICO’s exclusion letter did not opt out other class members besides itself and its affiliates.” *See In Re: Automotive Parts Antitrust Litigation, In re: Shock Absorbers*, Case No. 2:15-cv-03303-MOB-MKM, Dkt. No. 96, filed on August 15, 2018 (“Motion to Intervene”) at 13. GEICO has thus expressly clarified that its request for exclusion does not purport to opt out other class members. EPPs also understand that GEICO no longer contends that unidentified class members lacked the right to release the claims resolved by the Round 3 Settlements.

Second, the Round 3 Settling Defendants assert that “GEICO’s potential subrogation rights—arising from its payments under automobile policies for covered losses—extend only to those covered losses,” and “create no subrogation rights to unrelated losses, including alleged losses to Class Members giving rise to antitrust claims.” Motion to Deny at 3. GEICO has now stated that its claims “are not premised on subrogation rights.” Motion to Intervene at 13.

Third, the Round 3 Settling Defendants assert that “the Court should declare invalid GEICO’s exclusion request, because GEICO—an experienced and sophisticated litigant represented by experienced outside counsel—did not comply with the clear and unambiguous

¹ *See, e.g., In Re: Automotive Parts Antitrust Litigation, In re: Shock Absorbers*, Case No. 2:15-cv-03303-MOB-MKM, Dkt. No. 93, filed on August 13, 2018.

exclusion requirements that were set forth in the Court's March 2018 Class Notice." Motion to Deny at 3. EPPs take no position on the opt out request validity arguments advanced by defendants or GEICO.

The proposed final judgments being contemporaneously lodged with the Court for the Round 3 Settlements state that the Court will expressly reserve continuing jurisdiction to resolve the validity of GEICO's opt out request. Those judgments provide as follows:

A request for exclusion from the Settlement Class has been received from GEICO and its expressly identified affiliates. [Settling Defendant] has raised objections to the validity and effect of this request. The Court will resolve those objections in a subsequent order in the above-captioned action pursuant to Paragraph 11 above. Accordingly, without affecting the finality of this Judgment in any way, the Court hereby retains exclusive and continuing jurisdiction to determine the validity and effect of the request for exclusion submitted by GEICO and its expressly identified affiliates notwithstanding the entry of this Judgment.

This Court can and should enter those judgments at this time and reserve for later determination the question of the validity of GEICO's opt out request.

Fourth, Defendants assert that "GEICO's continued prosecution of its recently filed complaint against the Round 3 Defendants violates the litigation stays already orders as part of the Court's Preliminary Approval Orders." Motion to Deny at 4. EPPs take no position on the litigation stay arguments advanced by defendants.

Dated: August 27, 2018

Respectfully submitted,

SUSMAN GODFREY L.L.P.

/s/ Marc M. Seltzer

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

/s/ Marc M. Seltzer
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SUSMAN GODFREY L.L.P.